



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: MARCH 31, 2023

IN THE MATTER OF:

Appeal Board No. 627752

PRESENT: MICHAEL T. GREASON, MARILYN P. O'MARA MEMBERS

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits, effective August 29, 2022. The employer requested a hearing and objected contenting that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause; and contending that the claimant should be held ineligible to receive benefits because the claimant was not capable of work.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed January 12, 2023 (), the Administrative Law Judge overruled the employer's objections and sustained the initial determinations of eligibility.

The employer appealed the Judge's decision to the Appeal Board.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made insofar as they concern the issue of the claimant's capability and eligibility for employment. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern that issue, only, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

As to the issue of the employer's objection that the claimant should be

disqualified on the basis of voluntary separation from employment without good cause, only, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a "retail parts pro" by the employer auto parts store for nearly seven years. The employer assigned the claimant to work the 7:00 AM to 3:00 PM shift because the claimant had expressed to the employer that he had a blood sugar issue, and that early shift allowed him to schedule his meals to accommodate that medical issue.

While he was working this shift on August 1, 2022, the claimant learned that the coworker who was supposed to relieve him was sick and would not be coming in. The claimant communicated this to the general manager (CP), who responded that he was not able to come in and help with coverage because of a late day medical appointment.

At some point while he was working on August 1, 2022, the claimant began to experience a panic attack. He felt confused, trapped, and off-balance, and did not feel safe continuing to work at the store, which might have required him to climb a ladder. The claimant did not notify CP that he was experiencing a medical condition that day, and that he needed to leave at or near the end of his shift. Had the claimant told CP that he was experiencing a medical issue, the general manager could have reached out to the regional manager and arranged for someone from another store to cover the claimant's shift and/or the following shift, or could have closed the store early.

Instead of explaining his situation, at around 1:30 PM, the claimant sent CP a text message stating that he was giving his two weeks' notice, indicating that he would not be working his notice period, and telling the employer to give him his vacation pay for the first week, and whatever is left over for the second week. The message made no reference to feeling ill or experiencing any physical symptoms that were affecting the claimant's ability to continue to work. The claimant completed his shift, and left.

OPINION: The credible evidence establishes that the claimant was separated from employment when he gave the employer two-weeks' notice on August 1, 2022, and did not thereafter return to work. However, the record fails to establish that the claimant had good cause to quit his continuing employment on August 1, 2022.

We are not persuaded by the claimant's testimony that the panic attack he was experiencing was so debilitating that he was not able to think reasonably or rationally, and for that reason he did not inform the employer that he was not feeling well and request time off, or other accommodation. The text message the claimant sent to the employer informing of his resignation, giving two weeks' notice, advising that he would not be working during his notice period, and detailing the manner in which he wished to be paid for that period, belies the claimant's testimony that he was not able to have any reasonable or rational thoughts. Since the claimant had the wherewithal to consider how he wanted to receive his notice pay, and instruct the employer accordingly, we do not credit his contention that he was not physically or mentally able to take reasonable steps to preserve his employment prior to quitting.

Although the claimant testified that he did not think that the employer would have sent someone to the store to assist him sooner if he had told them he was experiencing a panic attack, it is significant that he did not even make such an inquiry. Further, the record does not establish that the employer would not have

assisted the claimant had they been informed of his medical situation, and does establish that the employer had taken steps to accommodate the claimant's blood sugar condition, supporting a finding that an accommodation would have been available had the claimant asked.

While we are persuaded that the claimant was experiencing some kind of medical issue on August 1, 2022, supported by his undisputed testimony that he was diagnosed days later with a vertigo condition, the evidence fails to establish that the claimant took reasonable-or any steps to preserve his employment prior to quitting. Accordingly, we find that the claimant's voluntary separation was without good cause under the Labor Law, and we conclude that he was separated from employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

The employer's objection that the claimant should be held ineligible to receive benefits because the claimant was not capable of work, is overruled.

The employer's objection that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment

without good cause, is sustained, effective August 1, 2022.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is disqualified from receiving benefits, effective August 1, 2022, until the claimant has subsequently worked in employment and earned remuneration at least equal to 10 times the claimant's weekly benefit rate. Employment and earnings from non-covered, excluded or self-employment will not count.

The claimant is denied benefits in connection with the voluntary separation issue decided herein.

MICHAEL T. GREASON, MEMBER

MARILYN P. O'MARA, MEMBER